

SPECIAL CIVIL APPLICATION NO. 1978 OF 1986
WITH
SPECIAL CIVIL APPLICATION NO. 108 OF 1990

Date of decision: 18.4.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(18-4-1996)

SCA 1978/86:

Mr. B. P. Tanna for the petitioner
Ms. Sejal Mandavia for the respondents.

SCA 108/90:

Mr. P. B. Majmudar for the ..R

Ms. Sejal Mandavia for the respondents.

ORAL JUDGMENT:

Both these writ petitions filed by the same petitioner raise almost identical questions of facts and as such they are being disposed of by this common order.

The petitioner was appointed, after having been selected by GPSC in the year 1979 as Taluka Development Officer, Class II post. He joined the service on 6-12-1979. One post of Deputy District Development Officer (Scarcity) at Jamnagar came to be created by the Government. The petitioner was given urgent temporary promotion to the temporarily created post which post he joined on 20th January, 1986. Under order dated 2-4-1986 of respondent No.1 some officers of class II were transferred and posted on promotion to class I posts i.e., Deputy District Development Officers. Name of the petitioner was not there in that order. The promotion of the officers named in the order dated 2-4-1986 has been made on the recommendation of the Departmental Promotion Committee. The petitioner has come up with the case that many officers named in the order dated 2-4-1986 are juniors to him in the cadre of Class II, and the petitioner has been superceded in promotion. In place of petitioner respondent No.4 in special civil application No.1978 of 1986 was posted as Deputy District Development Officer (Scarcity), Jamnagar. This order dated 2.4.1986 of promotion of respondent No.4 has been challenged by the petitioner in special civil application No.1978 of 1986. The petitioner has been reverted on non-recommendation of his name for promotion by the Departmental Promotion Committee.

2. Thereafter the petitioner was promoted from the cadre of Gujarat Development Service Class II to the Gujarat Development Service Class I, under order dated 1-4-1987 and he was posted as Deputy District Development Officer, District Panchayat, Kachchh. It was a provisional promotion on the recommendation of the Departmental Promotion Committee. The petitioner filed special civil application No.108 of 1990 having the apprehension that he is likely to be reverted from the post of Deputy District Development Officer Class I vide order of the Government bearing No.ISR/1086/1792/Z dated 5-1-1990. It has further been mentioned by the petitioner that as a matter of fact the order of reversion has already been passed. But the copy of the order has not been produced by the petitioner. In special civil application No.108 of 1990 this Court issued

rule on 29th January, 1990 and also granted ad-interim relief in terms of para 12 (c) , meaning thereby the respondents were restrained from implementing the reversion order dated 5-1-1990. This interim relief is continued till this date.

3. Respondents have contested both the writ petitions.

Reply to the writ petition has been filed in both the cases. Respondents have come up with the case that the petitioner was superceded under order dated 2-4-1986 and consequently reverted as he was not adjudged suitable for promotion to the Gujarat Development Service Class I service as he could not stand to comparative merit. It was only urgent temporary promotion which has been given and when he was not adjudged suitable for promotion he has rightly been reverted. Fitness for promotion of the petitioner is adjudged by overall performance during the last five years. In special civil application No.108 of 1990 the respondents have come up with the case that the petitioner was provisionally adjudged suitable by the Departmental Promotion Committee in its meetings held on 8-12-1986, 22-12-1986 and 5-1-1987. The Departmental Promotion Committee examined the confidential reports and decided to include the name of the petitioner in the provisional list subject to the approval of G.P.S.C. Recommendation of the Departmental Promotion Committee was forwarded to the Gujarat Public Service Commission by the respondents, but G.P.S.C. vide its letter dated 21st January, 1988 informed the Government that inclusion of the petitioner in the select list of Gujarat Development Service Class I is not approved, and advised to drop his name from the provisional select list. Since the petitioner was given provisional promotion, on non-approval of his name for inclusion in the select list by GPSC the order of his reversion from the post of Deputy District Development Officer has been passed on 5-1-1990. The reversion of the petitioner under order dated 5-1-1990 is stated to be justified in the facts of the case.

4. The petitioner filed rejoinder in special civil application No.108 of 1990. Mr. B. P. Tanna, learned counsel for the petitioner, contended that the decision of the Departmental Promotion Committee not adjudging the petitioner suitable for promotion to the Gujarat Development Service Class I is highly arbitrary. Except the adverse remarks for the year 1983-84 there was nothing adverse against the petitioner in his service record. The petitioner has already been promoted and as such reversion has been made illegally. Mr. P. B. Majmudar, learned counsel for the petitioner in special civil application No.108 of 1990 contended that on the basis of some adverse remarks the petitioner could not have been adjudged

unsuitable by G.P.S.C., more so when the Departmental Promotion Committee has provisionally approved his name. It has next been contended that the provisional promotion was not subject to the condition of approval of his promotion by the G.P.S.C. Mr. Majmudar further contended that there is no provision which requires approval of G.P.S.C. of the provisional promotion made by the Departmental Promotion Committee in the cadre of Gujarat Development Service Class I. It has further been contended that the decision of the Gujarat Public Service Commission for non-approval of the name of the petitioner for promotion in the cadre of Gujarat Development Service Class I is illegal.

5. I have given my thoughtful consideration to the contentions raised by the counsel for the parties. It is not in dispute that the criteria for promotion to the cadre of Gujarat Development Service Class I is proved merit and efficiency. It is also not in dispute that against the adverse remarks of the year 1983-84 the petitioner made representation and the same has been rejected. In both the special civil applications, the petitioner has not challenged the decision of the respondents rejecting the representation against adverse remarks for the year 1983-84. The petitioner has not prayed in any of the special civil applications for expunction of the adverse remarks.

6. In the affidavit-in-rejoinder filed in special civil application No.108 of 1990 it is nowhere stated by the petitioner that there is no provision for seeking approval from G.P.S.C. of the provisional promotion recommended by the Departmental Promotion Committee. The averments made in this respect are necessary to be referred. In para 6 the petitioner made statement, "I submit that when I was promoted, there was no such condition that my promotion was subject to approval of G.P.S.C. I do not think, therefore, that any such approval of G.P.S.C. would be necessary. In fact, even if mere consultation of the G.P.S.C. is necessary, it cannot be said to be a condition precedent for my promotion. However, I am also going to join G.P.S.C. as a party to this petition to know as to on what basis and on what material they have not approved my promotion. Since I am not aware of such advice to the Government not to include my name in the select list, I am not in a position to comment upon the G.P.S.C.'s decision." In para 9 of the rejoinder the petitioner stated that on the face of it the reversion order dated 5-1-1990 was illegal and arbitrary and G.P.S.C.'s non-approval was also not proper in the facts of the case.

7. G.P.S.C. has not been impleaded as party in either of the petitions by the petitioner. Though in special civil

application No.108 of 1990 it is stated that he desired to implead G.P.S.C. as party, it was not done. The petitioner has also not disputed the fact that the Departmental Promotion Committee has examined the confidential report of the petitioner for the last five years.

8. It is settled law that this Court will not sit as appellate authority over the decision of the Departmental Promotion Committee. The recommendations made by the Departmental promotion Committee in respect of suitability or non-suitability of an officer for promotion to the higher post is not subject to judicial scrutiny of this court except where the petitioner comes up with the case of mala fides against the members of the Departmental Promotion Committee or where decision of the Departmental Promotion Committee is palpable perverse on the face of it. So far as the first question is concerned, suffice it to say that the petitioner has not come up with any case of mala fide. The next question is whether the decision of the Departmental Promotion Committee on earlier occasion when the petitioner was adjudged unsuitable for promotion can be said to be palpable perverse. As stated earlier, it is not in dispute that there were adverse remarks in the confidential report of the petitioner for the year 1983-84. These remarks were for the period within five years preceding the date of consideration for promotion. Secondly, the criteria for promotion is proved merit and efficiency and not seniority cum merit. Thus if there is any adverse remarks in the service record or there is any adversity in the service record, obviously the petitioner will not get promotion as promotion is to be made on the criteria of proved merit and efficiency. In such cases, comparative merit of the officers has to be considered by the Departmental Promotion Committee. An officer, may be junior, having very good or excellent service record will be promoted and the senior officer only having average record may be superceded. The petitioner in this case has proceeded under the impression that criteria for promotion being seniority cum merit, where, a senior officer even only having average service record and the junior officer having meritorious record, the former should be given preference. Overall assessment has to be made which has been done in the present case and in case the Departmental Promotion Committee has not adjudged the petitioner suitable for promotion, I do not find any illegality in the decision and the decision of the Committee cannot be said to be perverse. On the contrary, admittedly the petitioner was having adverse remarks in the service record for the year 1983-84. Taking into consideration these facts there remains no doubt that the Departmental Promotion Committee has rightly adjudged the petitioner unsuitable for promotion to the cadre of Gujarat Development

Service Class I.

9. Though the next Departmental Promotion Committee recommended the petitioner for provisional promotion, and the petitioner has been given promotion, the recommendation of the Departmental Promotion Committee was subject to the approval of the G.P.S.C. The G.P.S.C. has not approved the recommendation of the Departmental Promotion Committee, and rightly so, when the petitioner was having adverse remarks for the year 1983-84 and the representation against the same has also been rejected. The adversity has to be considered as it fell within the zone of five years and the criteria for promotion was admittedly proved merit and efficiency. I do not find any illegality in the action of the G.P.S.C. in not approving the promotion of the petitioner. Otherwise also G.P.S.C. has not been impleaded as party in the writ petitions. Decision of G.P.S.C. in not approving the promotion of the petitioner has also not been challenged in these writ petitions. Last but not the least, G.P.S.C. is a Constitutional body and when it considered the matter regarding approval of promotion of the petitioner, this Court will not sit as an appellate authority over that decision, more so when the decision has not been challenged on any ground whatsoever. I do not find any substance in the contention of the learned counsel for the petitioner that promotion of the petitioner was not subject to approval of G.P.S.C. I have already reproduced the pleadings made by the petitioner in the rejoinder to the reply where he has not come up with specific plea that approval was not necessary. Reference in this respect may be made to the Gujarat Public Service Co..R

Regulations, 1960 which have been framed by the Governor of Gujarat in exercise of the powers conferred by the proviso to Clause (3) of Article 320 of the Constitution of India. Regulation 3 of the aforesaid Regulations is relevant for the purposes of this case and the same reads as follows:

"3. It shall not be necessary to consult the commission in any of the matters specified in paragraphs (a) and (b) of clause (3) of article 320 of the Constitution in respect of --

(a) the posts and service specified in the Schedule, and

(b) temporary appointments to all other posts and service for a period not exceeding or not likely to exceed--

(i) Twelve months, in the case of posts in the Subordinate Secretariat Service (Ministerial Branch) includ..R

directorate of Information, Junior Translators, Supervisors, Scrutinisers (English) Branch, if no candidate from the select list prepared by the Commission is available for appointment; or

(ii) One year in any other case. "

The relevant part of Article 320 of the Constitution of India reads as under:

"320. (1) ...

(2) ...

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted --

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil.R

making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) "

G.P.S.C. is to be consulted in the matter of promotion of the petitioner because the post of Gujarat Development Service Class I is not included in the Schedule attached to the Regulations. The exception is only in respect of the posts and services specified in the Schedule. In view of the provisions of the Regulations, 1960 this contention is devoid of any substance. Reversion of the petitioner has rightly been made because the provisional promotion of the petitioner has not been approved by G.P.S.C.

10. In the result these special civil applications fail and the same are dismissed. Rule discharged. Interim stay order passed in special civil application No.108 of 1990 is vacated. No order as to costs.

